



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1991

Ms. Mary Ann Courter
Assistant General Counsel
Texas Department of Public Safety
P. O. Box 4087
Austin, Texas 78773-0001

OR91-598

Dear Ms. Courter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14158.

You have received a request for information relating to an internal Department of Public Safety (the department) investigation. Specifically, the requestor seeks "copies of the public portions of the personnel and internal affairs file on [a former department officer]." You have submitted to us for review information that you assert is responsive to the request, including a representative sample of the internal affairs file (Exhibit B) and a copy of a federal grand jury subpoena and the DPS compliance letter (Exhibit C). You claim that the requested information is excepted from required public disclosure under sections 3(a)(3) and 3(a)(8) of the Open Records Act.

Where an incident involving allegedly criminal conduct is still under active investigation, section 3(a)(8) may be invoked by any proper custodian of information that relates to the incident. Open Records Decision No. 474 (1987) at 4; *see also* Open Records Decision Nos. 297; 286 (1981). Open Records Decision No. 340 (1982) allowed a district attorney's office to withhold its investigative records even though the county had discontinued its investigation, because a federal investigation was still pending.

You advise us that portions of the information responsive to the request have been subpoenaed by a federal grand jury. You further advise that the United States Attorney conducting the investigation objects to release of the documents in your possession as he fears public disclosure might interfere with the successful prosecution of the crimes he is investigating. We have examined the documents at issue and conclude that they may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act. Because we resolve your request under section 3(a)(8), we need not address the applicability of section 3(a)(3) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-598.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/GK/lcd

Ref.: ID# 14158, OR91-037

cc: Ms. Lorraine Adams
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